

Remarks

Reconsideration of this Application is respectfully requested.

Claims 1, 6, 7, 9, 10, 13, and 20-30 are pending in the application, with claims 1 and 30 being the independent claims. Based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Rejection under 35 U.S.C. § 112, first paragraph

The rejection of claims 1, 6, 7, 9, 10, 13, and 20-30 under 35 U.S.C. § 112, first paragraph as allegedly failing to comply with the written description requirement was maintained. Applicants respectfully traverse the rejection for at least the reasons of record and those stated below.

The Examiner reiterates that since the claims encompass "myraid genii of peptides" and Applicants have not demonstrated what the remaining peptides in the composition should be by a structural or function definition, the claims are not adequately described. Applicants respectfully maintain that the Examiner is not following the guidance provided in the section of the M.P.E.P. to which she repeatedly cites, and the citation to *Ariad Pharmaceuticals, Inc. v. Eli Lilly & Co.* is misguided.

The transitional phrase "comprising" is a well-recognized term of art that takes into account that there could be unrecited elements encompassed by the claim. The Examiner seems to focus on the fact that the unrecited elements are *peptides*, when in fact, they are not so limited. In fact, were the claims to be limited to peptides, at least to

the extent that the claims encompass the other listed peptides, they would be adequately described in both structure and function.

The fact that there are unrecited elements does not *per se* result in the claims not being adequately described. Applicants respectfully point out that, though not binding in the present application, claims directed to compositions "comprising" a peptide are routinely issued by the USPTO. For example, Applicants direct the Examiner's attention to claim 2 of U.S. Pat. No. 7,122,620, as well as claim 6 of U.S. Pat. No. 5,154,923.

Furthermore, Applicants respectfully assert that the Examiner has totally ignored the language of new claim 30 as "consisting essentially of" at least one of the listed peptides, and has rejected the claim for the same reasons as those presented earlier. As defined by the M.P.E.P. (2111.03), "consisting essentially of" limits the scope of a claim to the specified materials to those that do not materially affect the basic and novel characteristics of the claimed invention. Thus, the Examiner is clearly incorrect to interpret this claim similarly to those that recite the transitional phrase "comprising."

Applicants again state that to follow the Examiner's line of reasoning would suggest that every claim using the term "comprising," be it a composition, or even method claim, would fail the written description requirement because they would naturally encompass unrecited elements. This is clearly not the standard for satisfying 35 U.S.C. § 112.

Accordingly, Applicants respectfully request that the rejection be reconsidered and withdrawn.


Conclusion

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

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